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OFFICE OF PETITIONS

LEE & HAYES, PLLC
601 W. RIVERSIDE AVENUE
SUITE 1400
SPOKANE, WA 99201

In re Application of :
David A. Matthews, et al. :
Application No. 10/783,382 : **ON PETITION**
Filed: February 20, 2004 :
Attorney Docket No.: MS1-2014US :

This is a decision in response to the petition under 37 CFR 1.137(b), filed March 26, 2010, to revive the above-identified application.

The petition is not signed by an attorney or agent of record; however, in accordance with 37 CFR 1.34(a), the signature of Randall T. Palmer appearing on the petition shall constitute a representation to the United States Patent and Trademark Office that he is authorized to represent the particular party on whose behalf he acts.

The petition is **GRANTED**.

The application became abandoned for failure to timely pay the issue and publication fees on or before March 2, 2010, as required by the Notice of Allowance and Fee(s) Due, mailed December 2, 2009, which set a statutory period for reply of three (3) months. It is noted that a Request for Continued Examination (RCE) under 37 CFR 114 was filed on February 16, 2010, which is within the period for paying the issue fee; however, the RCE was improper since it failed to include a proper submission under 37 CFR 1.114. Accordingly, the application became abandoned by operation of law on March 3, 2010. This decision precedes the mailing of a Notice of Abandonment.

On March 26, 2010, the present petition was filed, wherein petitioners request that the application be revived for consideration of a RCE under 37 CFR 1.114. Another RCE request and fee accompanied the present petition, along with an Information Disclosure Statement. However, in an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply under 37 CFR 1.137(b) must be the payment of the issue fee or any outstanding balance thereof. Accordingly, the \$1,510 issue fee is being charged to counsel's deposit account as authorized.

Further, 37 CFR 1.137(b)(3) requires a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. While the statement is not made by an attorney of record, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and

circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

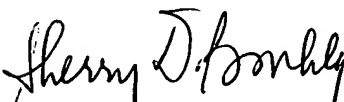
The petition is found to comply with the requirements of 37 CFR 1.137(b). Accordingly, the application is revived for consideration of a submission under 37 CFR 1.114 (request for continued examination).

Since it is noted that petitioners submitted a RCE filing fee with the present petition and the improper request of February 16, 2010, counsel's deposit account will be credited \$810 for the RCE filing fee overpayment.

Petitioner is advised that the issue fee paid in the above-identified application cannot be refunded. However, if the above-identified application is again allowed, petitioner may request that the issue fee paid on March 26, 2010, be applied towards the issue fee required by the new Notice of Allowance.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3204.

The application file is being forwarded to Technology Center AU 2174 for further processing of the request for continued examination under 37 CFR 1.114 filed March 26, 2010.


Sherry D. Brinkley
Petitions Examiner
Office of Petitions